

1-1 By: Smith of Harris (Senate Sponsor - Huffman) H.B. No. 2694  
1-2 (In the Senate - Received from the House April 26, 2011;  
1-3 April 27, 2011, read first time and referred to Committee on  
1-4 Natural Resources; May 5, 2011, reported adversely, with favorable  
1-5 Committee Substitute by the following vote: Yeas 10, Nays 0;  
1-6 May 5, 2011, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 2694 By: Estes

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to the continuation and functions of the Texas Commission  
1-11 on Environmental Quality and abolishing the On-site Wastewater  
1-12 Treatment Research Council.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 ARTICLE 1. GENERAL PROVISIONS

1-15 SECTION 1.01. The heading to Chapter 5, Water Code, is  
1-16 amended to read as follows:

1-17 CHAPTER 5. TEXAS [~~NATURAL RESOURCE CONSERVATION~~] COMMISSION ON  
1-18 ENVIRONMENTAL QUALITY

1-19 SECTION 1.02. Section 5.014, Water Code, is amended to read  
1-20 as follows:

1-21 Sec. 5.014. SUNSET PROVISION. The Texas [~~Natural Resource~~  
1-22 ~~Conservation~~] Commission on Environmental Quality is subject to  
1-23 Chapter 325, Government Code (Texas Sunset Act). Unless continued  
1-24 in existence as provided by that chapter, the commission is  
1-25 abolished and this chapter expires September 1, 2023 [~~2011~~].

1-26 SECTION 1.03. Subchapter C, Chapter 5, Water Code, is  
1-27 amended by adding Section 5.061 to read as follows:

1-28 Sec. 5.061. PROHIBITION ON ACCEPTING CAMPAIGN  
1-29 CONTRIBUTIONS. A member of the commission may not accept a  
1-30 contribution to a campaign for election to an elected office. If a  
1-31 member of the commission accepts a campaign contribution, the  
1-32 person is considered to have resigned from the office and the office  
1-33 immediately becomes vacant. The vacancy shall be filled in the  
1-34 manner provided by law.

1-35 SECTION 1.04. Subchapter D, Chapter 5, Water Code, is  
1-36 amended by adding Section 5.1031 to read as follows:

1-37 Sec. 5.1031. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE  
1-38 RESOLUTION. (a) The commission shall develop and implement a  
1-39 policy to encourage the use of:

1-40 (1) negotiated rulemaking procedures under Chapter  
1-41 2008, Government Code, for the adoption of commission rules; and

1-42 (2) appropriate alternative dispute resolution  
1-43 procedures under Chapter 2009, Government Code, to assist in the  
1-44 resolution of internal and external disputes under the commission's  
1-45 jurisdiction.

1-46 (b) The commission's procedures relating to alternative  
1-47 dispute resolution must conform, to the extent possible, to any  
1-48 model guidelines issued by the State Office of Administrative  
1-49 Hearings for the use of alternative dispute resolution by state  
1-50 agencies.

1-51 (c) The commission shall:

1-52 (1) coordinate the implementation of the policy  
1-53 adopted under Subsection (a);

1-54 (2) provide training as needed to implement the  
1-55 procedures for negotiated rulemaking or alternative dispute  
1-56 resolution; and

1-57 (3) collect data concerning the effectiveness of those  
1-58 procedures.

1-59 SECTION 1.05. Section 12.052(a), Water Code, is amended to  
1-60 read as follows:

1-61 (a) The commission shall make and enforce rules and orders  
1-62 and shall perform all other acts necessary to provide for the safe  
1-63 construction, maintenance, repair, and removal of dams located in

2-1 this state. In performing the commission's duties under this  
 2-2 subsection, the commission shall identify and focus on the most  
 2-3 hazardous dams in the state.

2-4 ARTICLE 2. TRANSFER OF CERTAIN DUTIES TO THE RAILROAD COMMISSION

2-5 SECTION 2.01. Section 91.011, Natural Resources Code, is  
 2-6 amended to read as follows:

2-7 Sec. 91.011. CASING. (a) Before drilling into the oil or  
 2-8 gas bearing rock, the owner or operator of a well being drilled for  
 2-9 oil or gas shall encase the well with good and sufficient wrought  
 2-10 iron or steel casing or with any other material that meets standards  
 2-11 adopted by the commission, particularly where wells could be  
 2-12 subjected to corrosive elements or high pressures and temperatures,  
 2-13 in a manner and to a depth that will exclude surface or fresh water  
 2-14 from the lower part of the well from penetrating the oil or gas  
 2-15 bearing rock, and if the well is drilled through the first into the  
 2-16 lower oil or gas bearing rock, the well shall be cased in a manner  
 2-17 and to a depth that will exclude fresh water above the last oil or  
 2-18 gas bearing rock penetrated.

2-19 (b) The commission shall adopt rules regarding the depth of  
 2-20 well casings necessary to meet the requirements of this section.

2-21 SECTION 2.02. Subchapter B, Chapter 91, Natural Resources  
 2-22 Code, is amended by adding Section 91.0115 to read as follows:

2-23 Sec. 91.0115. CASING; LETTER OF DETERMINATION. (a) The  
 2-24 commission shall issue, on request from an applicant for a permit  
 2-25 for a well to be drilled into oil or gas bearing rock, a letter of  
 2-26 determination stating the total depth of surface casing required  
 2-27 for the well by Section 91.011.

2-28 (b) The commission may charge a fee in an amount to be  
 2-29 determined by the commission for a letter of determination.

2-30 (c) The commission shall charge a fee not to exceed \$75, in  
 2-31 addition to the fee required by Subsection (b), for processing a  
 2-32 request to expedite a letter of determination. Money collected  
 2-33 under this subsection may be used only to study and evaluate  
 2-34 electronic access to geologic data and surface casing depths under  
 2-35 Section 91.020.

2-36 SECTION 2.03. Subchapter B, Chapter 91, Natural Resources  
 2-37 Code, is amended by adding Section 91.020 to read as follows:

2-38 Sec. 91.020. ELECTRONIC GEOLOGIC DATA. The commission  
 2-39 shall work cooperatively with other appropriate state agencies to  
 2-40 study and evaluate electronic access to geologic data and surface  
 2-41 casing depths necessary to protect usable groundwater in this  
 2-42 state.

2-43 SECTION 2.04. Section 27.033, Water Code, is amended to  
 2-44 read as follows:

2-45 Sec. 27.033. LETTER OF DETERMINATION [~~FROM EXECUTIVE~~  
 2-46 ~~DIRECTOR~~]. A person making application to the railroad commission  
 2-47 for a permit under this chapter shall submit with the application a  
 2-48 letter of determination from the railroad commission [~~from the~~  
 2-49 ~~executive director~~] stating that drilling and using the disposal  
 2-50 well and injecting oil and gas waste into the subsurface stratum  
 2-51 will not endanger the freshwater strata in that area and that the  
 2-52 formation or stratum to be used for the disposal is not freshwater  
 2-53 sand.

2-54 SECTION 2.05. Section 27.046, Water Code, is amended to  
 2-55 read as follows:

2-56 Sec. 27.046. LETTER OF DETERMINATION [~~FROM EXECUTIVE~~  
 2-57 ~~DIRECTOR~~]. (a) The railroad commission may not issue a permit  
 2-58 under rules adopted under this subchapter until the commission  
 2-59 issues to the applicant for the permit [~~provides to the railroad~~  
 2-60 ~~commission~~] a letter of determination [~~from the executive director~~]  
 2-61 stating that drilling and operating the anthropogenic carbon  
 2-62 dioxide injection well for geologic storage or operating the  
 2-63 geologic storage facility will not injure any freshwater strata in  
 2-64 that area and that the formation or stratum to be used for the  
 2-65 geologic storage facility is not freshwater sand.

2-66 (b) To make the determination required by Subsection (a),  
 2-67 the railroad commission [~~executive director~~] shall review:

- 2-68 (1) the area of review and corrective action plans;  
 2-69 (2) any subsurface monitoring plans required during

3-1 injection or post injection;  
3-2 (3) any postinjection site care plans; and  
3-3 (4) any other elements of the application reasonably  
3-4 required in order for the railroad commission [~~executive director~~]  
3-5 to make the determination required by Subsection (a).

3-6 (c) The railroad commission shall adopt rules to implement  
3-7 and administer this section.

3-8 SECTION 2.06. Section 5.701(r), Water Code, is repealed.

3-9 SECTION 2.07. (a) The Railroad Commission of Texas shall  
3-10 adopt rules to implement the changes in law made by this article not  
3-11 later than March 1, 2012.

3-12 (b) A rule, form, policy, or procedure of the Texas  
3-13 Commission on Environmental Quality related to the changes in law  
3-14 made by this article continues in effect as a rule, form, policy, or  
3-15 procedure of the Railroad Commission of Texas and remains in effect  
3-16 until amended or replaced by that agency.

3-17 ARTICLE 3. PUBLIC INTEREST

3-18 SECTION 3.01. Subchapter F, Chapter 5, Water Code, is  
3-19 amended by adding Section 5.239 to read as follows:

3-20 Sec. 5.239. PUBLIC EDUCATION AND ASSISTANCE. (a) The  
3-21 executive director shall ensure that the agency is responsive to  
3-22 environmental and citizens' concerns, including environmental  
3-23 quality and consumer protection.

3-24 (b) The executive director shall develop and implement a  
3-25 program to:

3-26 (1) provide a centralized point for the public to  
3-27 access information about the commission and to learn about matters  
3-28 regulated by the commission;

3-29 (2) identify and assess the concerns of the public in  
3-30 regard to matters regulated by the commission; and

3-31 (3) respond to the concerns identified by the program.

3-32 SECTION 3.02. Section 5.271, Water Code, is amended to read  
3-33 as follows:

3-34 Sec. 5.271. CREATION AND GENERAL RESPONSIBILITY OF THE  
3-35 OFFICE OF PUBLIC INTEREST COUNSEL. The office of public interest  
3-36 counsel is created to ensure that the commission promotes the  
3-37 public's interest [~~and is responsive to environmental and citizens'~~  
3-38 ~~concerns including environmental quality and consumer protection~~].  
3-39 The primary duty of the office is to represent the public interest  
3-40 as a party to matters before the commission.

3-41 SECTION 3.03. Subchapter G, Chapter 5, Water Code, is  
3-42 amended by adding Section 5.2725 to read as follows:

3-43 Sec. 5.2725. ANNUAL REPORT; PERFORMANCE MEASURES. (a) The  
3-44 office of public interest counsel shall report to the commission  
3-45 each year in a public meeting held on a date determined by the  
3-46 commission to be timely for the commission to include the reported  
3-47 information in the commission's reports under Sections 5.178(a) and  
3-48 (b) and in the commission's biennial legislative appropriations  
3-49 requests as appropriate:

3-50 (1) an evaluation of the office's performance in  
3-51 representing the public interest in the preceding year;

3-52 (2) an assessment of the budget needs of the office,  
3-53 including the need to contract for outside expertise; and

3-54 (3) any legislative or regulatory changes recommended  
3-55 under Section 5.273.

3-56 (b) The commission and the office of public interest counsel  
3-57 shall work cooperatively to identify performance measures for the  
3-58 office.

3-59 SECTION 3.04. Subchapter G, Chapter 5, Water Code, is  
3-60 amended by adding Section 5.276 to read as follows:

3-61 Sec. 5.276. FACTORS FOR PUBLIC INTEREST REPRESENTATION.

3-62 (a) The commission by rule, after consideration of recommendations  
3-63 from the office of public interest counsel, shall establish factors  
3-64 the public interest counsel must consider before the public  
3-65 interest counsel decides to represent the public interest as a  
3-66 party to a commission proceeding.

3-67 (b) Rules adopted under this section must include:

3-68 (1) factors to determine the nature and extent of the  
3-69 public interest; and

4-1 (2) factors to consider in prioritizing the workload  
4-2 of the office of public interest counsel.

4-3 ARTICLE 4. COMPLIANCE AND ENFORCEMENT

4-4 SECTION 4.01. Section 5.753, Water Code, is amended by  
4-5 amending Subsections (a) and (b) and adding Subsection (d-1) to  
4-6 read as follows:

4-7 (a) Consistent with other law and the requirements  
4-8 necessary to maintain federal program authorization, the  
4-9 commission by rule shall develop a method [uniform standard] for  
4-10 evaluating compliance history that ensures consistency in the  
4-11 evaluation. In developing the method, the commission may account  
4-12 for differences among regulated entities.

4-13 (b) The components of compliance history must include:

4-14 (1) except for orders described by Subsection  
4-15 (d-1)(2), enforcement orders, court judgments, consent decrees,  
4-16 and criminal convictions of this state and the federal government  
4-17 relating to compliance with applicable legal requirements under the  
4-18 jurisdiction of the commission or the United States Environmental  
4-19 Protection Agency;

4-20 (2) notwithstanding any other provision of this code,  
4-21 orders issued under Section 7.070;

4-22 (3) to the extent readily available to the commission,  
4-23 enforcement orders, court judgments, and criminal convictions  
4-24 relating to violations of environmental laws of other states; and

4-25 (4) changes in ownership.

4-26 (d-1) The components of compliance history may include:

4-27 (1) information related to the complexity of the  
4-28 regulated entity, including:

4-29 (A) the complexity of the regulatory  
4-30 requirements applicable to the entity; and

4-31 (B) the severity of the consequences of  
4-32 noncompliance by the entity;

4-33 (2) enforcement orders issued without penalties,  
4-34 shutdown orders, or other punitive sanctions; and

4-35 (3) any other positive compliance factors related to  
4-36 the regulated entity.

4-37 SECTION 4.02. Section 5.754(d), Water Code, is amended to  
4-38 read as follows:

4-39 (d) The commission by rule may require [shall establish  
4-40 methods of assessing the compliance history of regulated entities  
4-41 for which it does not have adequate compliance information. The  
4-42 methods may include requiring] a compliance inspection to determine  
4-43 an entity's eligibility for participation in a program that  
4-44 requires a high level of compliance.

4-45 SECTION 4.03. Subchapter A, Chapter 7, Water Code, is  
4-46 amended by adding Section 7.006 to read as follows:

4-47 Sec. 7.006. ENFORCEMENT POLICIES. (a) The commission by  
4-48 rule shall adopt a general enforcement policy that describes the  
4-49 commission's approach to enforcement.

4-50 (b) The commission shall assess, update, and publicly adopt  
4-51 specific enforcement policies regularly, including policies  
4-52 regarding the calculation of penalties.

4-53 (c) The commission shall make the policies available to the  
4-54 public, including by posting the policies on the commission's  
4-55 Internet website.

4-56 SECTION 4.04. Sections 7.052(a) and (c), Water Code, are  
4-57 amended to read as follows:

4-58 (a) The amount of the penalty for a violation of Chapter 37  
4-59 of this code, Chapter 366, 371, or 372, Health and Safety Code, or  
4-60 Chapter 1903, Occupations Code, may not be less than \$50 or greater  
4-61 than \$5,000 [exceed \$2,500] a day for each violation.

4-62 (c) The amount of the penalty for all other violations  
4-63 within the jurisdiction of the commission to enforce may not be less  
4-64 than \$50 or greater than \$25,000 [exceed \$10,000] a day for each  
4-65 violation.

4-66 SECTION 4.05. Section 7.067, Water Code, is amended to read  
4-67 as follows:

4-68 Sec. 7.067. SUPPLEMENTAL ENVIRONMENTAL PROJECTS. (a) The  
4-69 commission may compromise, modify, or remit, with or without

5-1 conditions, an administrative penalty imposed under this  
 5-2 subchapter. In determining the appropriate amount of a penalty for  
 5-3 settlement of an administrative enforcement matter, the commission  
 5-4 may consider a respondent's willingness to contribute to  
 5-5 supplemental environmental projects that are approved by the  
 5-6 commission, giving preference to projects that benefit the  
 5-7 community in which the alleged violation occurred. The commission  
 5-8 may encourage the cleanup of contaminated property through the use  
 5-9 of supplemental environmental projects. The commission may approve  
 5-10 a supplemental environmental project with activities in territory  
 5-11 of the United Mexican States if the project substantially benefits  
 5-12 territory in this state in a manner described by Subsection (b).  
 5-13 Except as provided by Subsection (a-1), the [The] commission may  
 5-14 not approve a project that is necessary to bring a respondent into  
 5-15 compliance with environmental laws, that is necessary to remediate  
 5-16 environmental harm caused by the respondent's alleged violation, or  
 5-17 that the respondent has already agreed to perform under a  
 5-18 preexisting agreement with a governmental agency.

5-19 (a-1) The commission may approve a supplemental  
 5-20 environmental project that is necessary to bring a respondent into  
 5-21 compliance with environmental laws or that is necessary to  
 5-22 remediate environmental harm caused by the respondent's alleged  
 5-23 violation if the respondent is a local government.

5-24 (a-2) The commission shall develop a policy to prevent  
 5-25 regulated entities from systematically avoiding compliance through  
 5-26 the use of supplemental environmental projects under Subsection  
 5-27 (a-1), including rules requiring an assessment of:

5-28 (1) the entity's financial ability to pay  
 5-29 administrative penalties;

5-30 (2) the ability of the entity to remediate the harm or  
 5-31 come into compliance; and

5-32 (3) the need for corrective action.

5-33 (b) In this section:

5-34 (1) "Local government" means a school district,  
 5-35 county, municipality, junior college district, river authority,  
 5-36 water district or other special district, or other political  
 5-37 subdivision created under the constitution or a statute of this  
 5-38 state.

5-39 (2) "Supplemental [~~,"supplemental]~~ environmental  
 5-40 project" means a project that prevents pollution, reduces the  
 5-41 amount of pollutants reaching the environment, enhances the quality  
 5-42 of the environment, or contributes to public awareness of  
 5-43 environmental matters.

5-44 SECTION 4.06. Section 13.4151(a), Water Code, is amended to  
 5-45 read as follows:

5-46 (a) If a person, affiliated interest, or entity subject to  
 5-47 the jurisdiction of the commission violates this chapter or a rule  
 5-48 or order adopted under this chapter, the commission may assess a  
 5-49 penalty against that person, affiliated interest, or entity as  
 5-50 provided by this section. The penalty may be in an amount not less  
 5-51 than \$100 or greater than \$5,000 [~~to exceed \$500]~~ a day. Each day a  
 5-52 violation continues may be considered a separate violation.

5-53 SECTION 4.07. Section 26.3467, Water Code, is amended by  
 5-54 adding Subsection (d) to read as follows:

5-55 (d) A person may not deliver any regulated substance into an  
 5-56 underground storage tank regulated under this chapter unless the  
 5-57 underground storage tank has been issued a valid, current  
 5-58 underground storage tank registration and certificate of  
 5-59 compliance under Section 26.346. The commission may impose an  
 5-60 administrative penalty against a person who violates this  
 5-61 subsection. The commission shall adopt rules as necessary to  
 5-62 enforce this subsection.

5-63 SECTION 4.08. Section 26.351, Water Code, is amended by  
 5-64 adding Subsections (c-1) and (c-2) to read as follows:

5-65 (c-1) The commission may undertake corrective action to  
 5-66 remove an underground or aboveground storage tank that:

5-67 (1) is not in compliance with the requirements of this  
 5-68 chapter;

5-69 (2) is out of service;

6-1 (3) presents a contamination risk; and  
6-2 (4) is owned or operated by a person who is financially  
6-3 unable to remediate the tank.

6-4 (c-2) The commission shall adopt rules to implement  
6-5 Subsection (c-1), including rules regarding:

6-6 (1) the determination of the financial ability of the  
6-7 tank owner or operator to remediate the tank; and

6-8 (2) the assessment of the potential risk of  
6-9 contamination from the site.

6-10 SECTION 4.09. Section 26.3573(d), Water Code, is amended to  
6-11 read as follows:

6-12 (d) The commission may use the money in the petroleum  
6-13 storage tank remediation account to pay:

6-14 (1) necessary expenses associated with the  
6-15 administration of the petroleum storage tank remediation account  
6-16 and the groundwater protection cleanup program;

6-17 (2) expenses associated with investigation, cleanup,  
6-18 or corrective action measures performed in response to a release or  
6-19 threatened release from a petroleum storage tank, whether those  
6-20 expenses are incurred by the commission or pursuant to a contract  
6-21 between a contractor and an eligible owner or operator as  
6-22 authorized by this subchapter;

6-23 (3) subject to the conditions of Subsection (f),  
6-24 expenses associated with investigation, cleanup, or corrective  
6-25 action measures performed in response to a release or threatened  
6-26 release of hydraulic fluid or spent oil from hydraulic lift systems  
6-27 or tanks located at a vehicle service and fueling facility and used  
6-28 as part of the operations of that facility; ~~and~~

6-29 (4) expenses associated with assuring compliance with  
6-30 the commission's applicable underground or aboveground storage  
6-31 tank administrative and technical requirements, including  
6-32 technical assistance and support, inspections, enforcement, and  
6-33 the provision of matching funds for grants; and

6-34 (5) expenses associated with investigation, cleanup,  
6-35 or corrective action measures performed under Section 26.351(c-1).

6-36 SECTION 4.10. Section 26.3574, Water Code, is amended by  
6-37 amending Subsection (b) and adding Subsection (b-1) to read as  
6-38 follows:

6-39 (b) A fee is imposed on the delivery of a petroleum product  
6-40 on withdrawal from bulk of that product as provided by this  
6-41 subsection. Each operator of a bulk facility on withdrawal from  
6-42 bulk of a petroleum product shall collect from the person who orders  
6-43 the withdrawal a fee in an amount determined as follows:

6-44 (1) not more than \$3.75 for each delivery into a cargo  
6-45 tank having a capacity of less than 2,500 gallons [~~for the state~~  
6-46 ~~fiscal year beginning September 1, 2007, through the state fiscal~~  
6-47 ~~year ending August 31, 2011]~~;

6-48 (2) not more than \$7.50 for each delivery into a cargo  
6-49 tank having a capacity of 2,500 gallons or more but less than 5,000  
6-50 gallons [~~for the state fiscal year beginning September 1, 2007,~~  
6-51 ~~through the state fiscal year ending August 31, 2011]~~;

6-52 (3) not more than \$11.75 for each delivery into a cargo  
6-53 tank having a capacity of 5,000 gallons or more but less than 8,000  
6-54 gallons [~~for the state fiscal year beginning September 1, 2007,~~  
6-55 ~~through the state fiscal year ending August 31, 2011]~~;

6-56 (4) not more than \$15.00 for each delivery into a cargo  
6-57 tank having a capacity of 8,000 gallons or more but less than 10,000  
6-58 gallons [~~for the state fiscal year beginning September 1, 2007,~~  
6-59 ~~through the state fiscal year ending August 31, 2011]~~; and

6-60 (5) not more than \$7.50 for each increment of 5,000  
6-61 gallons or any part thereof delivered into a cargo tank having a  
6-62 capacity of 10,000 gallons or more [~~for the state fiscal year~~  
6-63 ~~beginning September 1, 2007, through the state fiscal year ending~~  
6-64 ~~August 31, 2011]~~.

6-65 (b-1) The commission by rule shall set the amount of the fee  
6-66 in Subsection (b) in an amount not to exceed the amount necessary to  
6-67 cover the agency's costs of administering this subchapter, as  
6-68 indicated by the amount appropriated by the legislature from the  
6-69 petroleum storage tank remediation account for that purpose.

7-1 SECTION 4.11. (a) Not later than September 1, 2012, the  
7-2 Texas Commission on Environmental Quality by rule shall establish  
7-3 the method for evaluating compliance history as required by Section  
7-4 5.753(a), Water Code, as amended by this article. Until the  
7-5 commission adopts that method, the commission shall continue in  
7-6 effect its current standard for evaluating compliance history.

7-7 (b) The changes in law made by Sections 7.052 and 13.4151,  
7-8 Water Code, as amended by this article, apply only to a violation  
7-9 that occurs on or after the effective date of this Act. For  
7-10 purposes of this section, a violation occurs before the effective  
7-11 date of this Act if any element of the violation occurs before that  
7-12 date. A violation that occurs before the effective date of this Act  
7-13 is covered by the law in effect on the date the violation occurred,  
7-14 and the former law is continued in effect for that purpose.

7-15 (c) The change in law made by Section 26.3467(d), Water  
7-16 Code, as added by this article, applies only to a delivery of a  
7-17 regulated substance to a petroleum storage tank made on or after the  
7-18 effective date of this Act.

7-19 ARTICLE 5. WATER RIGHTS

7-20 SECTION 5.01. Section 11.031, Water Code, is amended by  
7-21 adding Subsections (d), (e), and (f) to read as follows:

7-22 (d) Each person who has a water right issued by the  
7-23 commission or who impounds, diverts, or otherwise uses state water  
7-24 shall maintain water use information on a monthly basis during the  
7-25 months a water rights holder uses permitted water. The person shall  
7-26 make the information available to the commission on the  
7-27 commission's request.

7-28 (e) The commission may request information maintained under  
7-29 Subsection (d) only during a drought or other emergency shortage of  
7-30 water.

7-31 (f) A person submitting a report under Subsection (a) is not  
7-32 required to include information maintained under Subsection (d).

7-33 SECTION 5.02. Subchapter B, Chapter 11, Water Code, is  
7-34 amended by adding Section 11.053 to read as follows:

7-35 Sec. 11.053. EMERGENCY ORDER CONCERNING WATER RIGHTS. (a)  
7-36 During a period of drought or other emergency shortage of water, the  
7-37 executive director by order may:

7-38 (1) temporarily suspend the right of any person who  
7-39 holds a water right to use the water; and

7-40 (2) adjust the allocation of water between water  
7-41 rights holders.

7-42 (b) The executive director in ordering a suspension or an  
7-43 allocation adjustment under this section shall ensure that an  
7-44 action taken:

7-45 (1) maximizes the beneficial use of water;

7-46 (2) minimizes the impact on water rights holders; and

7-47 (3) prevents the waste of water.

7-48 (c) The commission shall adopt rules to implement this  
7-49 section, including rules to determine the conditions under which  
7-50 the executive director may take action under this section.

7-51 SECTION 5.03. Section 11.326, Water Code, is amended by  
7-52 adding Subsections (g) and (h) to read as follows:

7-53 (g) For a water basin in which a watermaster is not  
7-54 appointed, the executive director shall:

7-55 (1) evaluate the water basin at least once every five  
7-56 years to determine whether a watermaster should be appointed; and

7-57 (2) report the findings and make recommendations to  
7-58 the commission.

7-59 (h) The commission shall:

7-60 (1) determine the criteria or risk factors to be  
7-61 considered in an evaluation under Subsection (g); and

7-62 (2) include the findings and recommendations under  
7-63 Subsection (g) in the commission's biennial report to the  
7-64 legislature.

7-65 ARTICLE 6. FUNDING

7-66 SECTION 6.01. Section 401.246(a), Health and Safety Code,  
7-67 is amended to read as follows:

7-68 (a) Compact waste disposal fees adopted by the commission  
7-69 must be sufficient to:

8-1 (1) allow the compact waste facility license holder to  
 8-2 recover costs of operating and maintaining the compact waste  
 8-3 disposal facility and a reasonable profit on the operation of that  
 8-4 facility;

8-5 (2) provide an amount necessary to meet future costs  
 8-6 of decommissioning, closing, and postclosure maintenance and  
 8-7 surveillance of the compact waste disposal facility and the compact  
 8-8 waste disposal facility portion of the disposal facility site;

8-9 (3) provide an amount to fund local public projects  
 8-10 under Section 401.244;

8-11 (4) provide a reasonable rate of return on capital  
 8-12 investment in the facilities used for management or disposal of  
 8-13 compact waste at the compact waste disposal facility; ~~and~~

8-14 (5) provide an amount necessary to pay compact waste  
 8-15 disposal facility licensing fees, to pay compact waste disposal  
 8-16 facility fees set by rule or statute, and to provide security for  
 8-17 the compact waste disposal facility as required by the commission  
 8-18 under law and commission rules; and

8-19 (6) provide an amount necessary to support the  
 8-20 activities of the Texas Low-Level Radioactive Waste Compact  
 8-21 Commission.

8-22 SECTION 6.02. Subchapter F, Chapter 401, Health and Safety  
 8-23 Code, is amended by adding Section 401.251 to read as follows:

8-24 Sec. 401.251. LOW-LEVEL RADIOACTIVE WASTE DISPOSAL COMPACT  
 8-25 COMMISSION ACCOUNT. (a) The low-level radioactive waste disposal  
 8-26 compact commission account is an account in the general revenue  
 8-27 fund.

8-28 (b) The commission shall deposit in the account the portion  
 8-29 of the fee collected under Section 401.245 that is calculated to  
 8-30 support the activities of the Texas Low-Level Radioactive Waste  
 8-31 Disposal Compact Commission as required by Section 4.04(4), Texas  
 8-32 Low-Level Radioactive Waste Disposal Compact (Section 403.006 of  
 8-33 this code).

8-34 (c) Money in the account may be appropriated only to support  
 8-35 the operations of the Texas Low-Level Radioactive Waste Disposal  
 8-36 Compact Commission.

8-37 SECTION 6.03. Sections 5.701(n) and (p), Water Code, are  
 8-38 amended to read as follows:

8-39 (n)(1) Each provider of potable water or sewer utility  
 8-40 service shall collect a regulatory assessment from each retail  
 8-41 customer as follows:

8-42 (A) A public utility as defined in Section 13.002  
 8-43 ~~[of this code]~~ shall collect from each retail customer a regulatory  
 8-44 assessment equal to one percent of the charge for retail water or  
 8-45 sewer service.

8-46 (B) A water supply or sewer service corporation  
 8-47 as defined in Section 13.002 ~~[of this code]~~ shall collect from each  
 8-48 retail customer a regulatory assessment equal to ~~[one-half of]~~ one  
 8-49 percent of the charge for retail water or sewer service.

8-50 (C) A district as defined in Section 49.001 ~~[of~~  
 8-51 ~~this code]~~ that provides potable water or sewer utility service to  
 8-52 retail customers shall collect from each retail customer a  
 8-53 regulatory assessment equal to ~~[one-half of]~~ one percent of the  
 8-54 charge for retail water or sewer service.

8-55 (2) The regulatory assessment may be listed on the  
 8-56 customer's bill as a separate item and shall be collected in  
 8-57 addition to other charges for utility services.

8-58 (3) ~~The [commission shall use the]~~ assessments  
 8-59 collected under this subsection may be appropriated only to the  
 8-60 commission or to the Public Utility Commission of Texas solely to  
 8-61 pay costs and expenses incurred by the agency [commission] in the  
 8-62 regulation of districts, water supply or sewer service  
 8-63 corporations, and public utilities under Chapter 13[~~, Water Code~~].

8-64 (4) The commission shall annually use a portion of the  
 8-65 assessments to provide on-site technical assistance and training to  
 8-66 public utilities, water supply or sewer service corporations, and  
 8-67 districts. The commission shall contract with others to provide  
 8-68 the services.

8-69 (5) The commission by rule may establish due dates,

9-1 collection procedures, and penalties for late payment related to  
9-2 regulatory assessments under this subsection. The executive  
9-3 director shall collect all assessments from the utility service  
9-4 providers.

9-5 (6) The commission shall assess a penalty against a  
9-6 municipality with a population of more than 1.5 million that does  
9-7 not provide municipal water and sewer services in an annexed area in  
9-8 accordance with Section 43.0565, Local Government Code. A penalty  
9-9 assessed under this paragraph shall be not more than \$1,000 for each  
9-10 day the services are not provided after March 1, 1998, for areas  
9-11 annexed before January 1, 1993, or not provided within 4-1/2 years  
9-12 after the effective date of the annexation for areas annexed on or  
9-13 after January 1, 1993. A penalty collected under this paragraph  
9-14 shall be deposited to the credit of the water resource management  
9-15 account to be used to provide water and sewer service to residents  
9-16 of the city.

9-17 (7) The regulatory assessment does not apply to water  
9-18 that has not been treated for the purpose of human consumption.

9-19 (p) Notwithstanding any other law, fees collected for  
9-20 deposit to the water resource management account under the  
9-21 following statutes may be appropriated and used to protect water  
9-22 resources in this state, including assessment of water quality,  
9-23 reasonably related to the activities of any of the persons required  
9-24 to pay a fee under:

- 9-25 (1) Subsection (b), to the extent those fees are paid  
9-26 by water districts, and Subsections (e), (f), and (n);
- 9-27 (2) ~~[Sections 13.4521 and 13.4522; or~~
- 9-28 ~~[(3)] Section 54.037(c); or~~
- 9-29 (3) Section 367.010, Health and Safety Code.

9-30 SECTION 6.04. Subchapter L, Chapter 13, Water Code, is  
9-31 repealed.

9-32 ARTICLE 7. WATER AND SEWER UTILITIES

9-33 SECTION 7.01. Subchapter E, Chapter 13, Water Code, is  
9-34 amended by adding Section 13.1325 to read as follows:

9-35 Sec. 13.1325. ELECTRONIC COPIES OF RATE INFORMATION. The  
9-36 state agency with jurisdiction over rates charged by water and  
9-37 sewer utilities shall provide to a ratepayer, at a reasonable cost  
9-38 to the ratepayer, electronic copies of information provided to the  
9-39 agency under Sections 13.016, 13.043, and 13.187, to the extent  
9-40 that the information is available and not confidential.

9-41 ARTICLE 8. ABOLITION OF THE ON-SITE WASTEWATER TREATMENT RESEARCH  
9-42 COUNCIL

9-43 SECTION 8.01. The heading to Chapter 367, Health and Safety  
9-44 Code, is amended to read as follows:

9-45 CHAPTER 367. ON-SITE WASTEWATER TREATMENT RESEARCH [~~COUNCIL~~]

9-46 SECTION 8.02. Section 367.001, Health and Safety Code, is  
9-47 amended to read as follows:

9-48 Sec. 367.001. DEFINITIONS. In this chapter:

9-49 (1) "Commission" means the Texas Commission on  
9-50 Environmental Quality [~~Natural Resource Conservation Commission~~].

9-51 (2) [~~"Council" means the On-site Wastewater Treatment~~  
9-52 ~~Research Council.~~

9-53 [~~(3)~~] "On-site wastewater treatment system" means a  
9-54 system of treatment devices or disposal facilities that:

9-55 (A) is used for the disposal of domestic sewage,  
9-56 excluding liquid waste resulting from the processes used in  
9-57 industrial and commercial establishments;

9-58 (B) is located on the site where the sewage is  
9-59 produced; and

9-60 (C) produces not more than 5,000 gallons of waste  
9-61 a day.

9-62 SECTION 8.03. Section 367.007, Health and Safety Code, is  
9-63 amended to read as follows:

9-64 Sec. 367.007. ADMINISTRATION. (a) [~~The council is not an~~  
9-65 ~~advisory body to the commission. The commission, at the direction~~  
9-66 ~~of the council, shall implement council decisions.~~

9-67 [~~(b) The council may enter into an interagency contract with~~  
9-68 ~~the commission to provide staff and other administrative support as~~  
9-69 ~~required to improve the quality of wastewater treatment and reduce~~

10-1 ~~the cost of providing wastewater treatment to consumers.~~  
10-2 [~~(c)~~] The commission [~~council~~] may accept grants and  
10-3 donations from other sources to supplement the fees collected under  
10-4 Section 367.010. Grants and donations shall be deposited to the  
10-5 credit of the water resource management [~~on-site wastewater~~  
10-6 ~~treatment research~~] account and may be disbursed as the commission  
10-7 [~~council~~] directs and in accordance with Section 367.008.

10-8 (b) [~~(d)~~] Administrative and facilities support costs are  
10-9 payable from the water resources management [~~on-site wastewater~~  
10-10 ~~treatment research~~] account.

10-11 [~~(e) The council may award grants and enter into contracts~~  
10-12 ~~in its own name and on its own behalf.~~]

10-13 SECTION 8.04. Section 367.008, Health and Safety Code, is  
10-14 amended to read as follows:

10-15 Sec. 367.008. AWARD OF COMPETITIVE GRANTS. (a) The  
10-16 commission [~~council~~] shall establish procedures for awarding  
10-17 competitive grants and disbursing grant money.

10-18 (b) The commission [~~council~~] may award competitive grants  
10-19 to:

10-20 (1) support applied research and demonstration  
10-21 projects by accredited colleges and universities in this state, by  
10-22 other governmental entities, or by acceptable public or private  
10-23 research centers regarding on-site wastewater treatment technology  
10-24 and systems applicable to this state that are directed toward  
10-25 improving the quality of wastewater treatment and reducing the cost  
10-26 of providing wastewater treatment to consumers; and

10-27 (2) enhance technology transfer regarding on-site  
10-28 wastewater treatment by using educational courses, seminars,  
10-29 symposia, publications, and other forms of information  
10-30 dissemination.

10-31 (c) The commission shall seek the advice of relevant experts  
10-32 when choosing research topics, awarding grants, and holding  
10-33 educational conferences associated with activities under this  
10-34 chapter. [~~The council may award grants or make other expenditures~~  
10-35 ~~authorized under this chapter only after the comptroller certifies~~  
10-36 ~~that the on-site wastewater treatment research account contains~~  
10-37 ~~enough money to pay for those expenditures.~~]

10-38 SECTION 8.05. Section 367.009, Health and Safety Code, is  
10-39 amended to read as follows:

10-40 Sec. 367.009. APPROPRIATIONS. Money appropriated for the  
10-41 purposes of this chapter shall be disbursed as the commission  
10-42 [~~council~~] directs and in accordance with Section 367.008.

10-43 SECTION 8.06. Section 367.010(d), Health and Safety Code,  
10-44 is amended to read as follows:

10-45 (d) The fee proceeds shall be deposited to the credit of the  
10-46 water resources management [~~on-site wastewater treatment research~~]  
10-47 account.

10-48 SECTION 8.07. Sections 367.002, 367.003, 367.004, 367.005,  
10-49 367.006, and 367.011, Health and Safety Code, are repealed.

10-50 SECTION 8.08. (a) On the effective date of this Act, the  
10-51 Texas Commission on Environmental Quality shall assume the  
10-52 administration of all grants of the On-site Wastewater Treatment  
10-53 Research Council in existence on that date.

10-54 (b) The Texas Commission on Environmental Quality shall  
10-55 assume all contracts held by the On-site Wastewater Treatment  
10-56 Research Council on the effective date of this Act, including all  
10-57 rights and obligations associated with the contracts.

10-58 ARTICLE 9. EFFECTIVE DATE

10-59 SECTION 9.01. This Act takes effect September 1, 2011.

10-60 \* \* \* \* \*